



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Tom G. Mayer, M.D.

**Respondent Name**

East Texas Educational Insurance Association

**MFDR Tracking Number**

M4-16-0862-01

**Carrier's Austin Representative**

Box Number 17

**MFDR Date Received**

November 30, 2015

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The carrier in this case waived all defenses by violating rule 19.2010, Subchapter U, Chapter 19, of the Texas Insurance Code. When questioning the medical necessity or appropriateness of treatment, prior to issuing an adverse determination, the URA must afford the provider of record a reasonable opportunity to discuss the plan of treatment of the injured employee with the physician. The discussion must include the clinical basis for the URA's decision and a description of documentation or evidence that can be submitted by the provider that, on appeal, might lead to a different decision. Also, the URA must provide its telephone number so the provider of record may contact it to discuss the pending adverse determination. Further, the URA is required to maintain and submit to TDI or TDI-DWC on request, documentation that details the discussion opportunity. The documentation must include the date and time the URA afforded the opportunity to discuss the adverse determination as well as the date and time of the discussion, if any, and the discussion outcome. Rather than comply with the requirements of the rule requiring discussion prior to denial, the carrier simply provided an EOB denying payment."

**Amount in Dispute:** \$867.24

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "As Texas Division of Workers Compensation has accepted Official Disability Guidelines as a basis for review of medical care provided to an injured worker, consideration of services is based on the accepted work injury and guidelines set forth by ODG for that injury. Office Visits found to be outside ODG, when rendered by the treating physician, would be subject to retrospective review. All other medical care considered outside ODG for the accepted injury, would be subject to preauthorization.

Per the Peer Reviews dated 3/19/14 and 7/22/15 as well as addendum dated 10/5/15, services exceeding ODG guidelines would require preauthorization as related to the accepted injuries. Based on ODG, the compensable conditions are self limiting and should resolve within 6-8 weeks of the injury. Medical care outside 8 weeks of the date of injury, would require preauthorization.

It is our position that denial of these services should be maintained due to preauthorization not being obtained for services in question, which are considered to be outside ODG."

**Response Submitted by:** Claims Administrative Services, Inc.

## SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
June 9, 2105 July 15, 2015 August 5, 2015 September 9, 2015	Evaluation & Management, established patient (99214)	\$867.24	\$685.00

## FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

### Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §133.240 sets out the procedures for payment or denial of medical bills.
3. 28 Texas Administrative Code §134.203 sets out the guidelines for billing and reimbursing professional medical services.
4. 28 Texas Administrative Code §19.2003 provides definitions for terms related to utilization reviews.
5. 28 Texas Administrative Code §19.2009 sets out the procedures for notices of determination of utilization reviews.
6. 28 Texas Administrative Code §19.2010 provides the requirements prior to issuing adverse determinations of utilization review.
7. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 216 – Based on the findings of a review organization.

### Issues

1. Does a preauthorization issue exist for this dispute?
2. Did the insurance carrier appropriately raise medical necessity for this dispute?
3. What is the maximum allowable reimbursement (MAR) for the disputed services?
4. Is the requestor entitled to reimbursement for the disputed services?

### Findings

1. In their position statement, the insurance carrier stated, "It is our position that denial of these services should be maintained due to preauthorization not being obtained for services in question..." 28 Texas Administrative Code §133.307(d)(2)(F) states, in relevant part,

The response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review.

Review of the submitted documentation finds that preauthorization was not a denial reason presented to the requestor prior to the date of the request for medical fee dispute resolution. Therefore, this issue will not be considered for this dispute.

2. The insurance carrier denied disputed services with claim adjustment reason code 216 – "BASED ON THE FINDINGS OF A REVIEW ORGANIZATION."

Retrospective utilization review is defined in 28 Texas Administrative Code §19.2003(b)(31) as,

A form of utilization review for health care services that have been provided to an injured employee. Retrospective utilization review does not include review of services for which prospective or concurrent utilization reviews were previously conducted or should have been previously conducted.

In addition, 28 Texas Administrative Code §133.240(q) states, in relevant part,

When denying payment due to an adverse determination under this section, the insurance carrier shall comply with the requirements of §19.2009 of this title ... Additionally, in any instance where the insurance carrier is questioning the medical necessity or appropriateness of the health care services, the insurance carrier shall comply with the requirements of §19.2010 of this title ..., including the requirement that prior to issuance of an adverse determination the insurance carrier shall afford the health care provider a reasonable opportunity to discuss the billed health care with a doctor ...

Submitted documentation does not support that the insurance carrier followed the appropriate procedures for a retrospective review denial of the disputed services outlined in §19.2003(b)(31) or §133.240(q). Therefore, the insurance carrier did not appropriately raise medical necessity for this dispute.

3. Because denial of the disputed services was not supported, they are reviewed in accordance with applicable rules and fee guidelines. 28 Texas Administrative Code §134.203(c) states,

To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications.

- (1) For service categories of Evaluation & Management, General Medicine, Physical Medicine and Rehabilitation, Radiology, Pathology, Anesthesia, and Surgery when performed in an office setting, the established conversion factor to be applied is \$52.83...
- (2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors, and shall be effective January 1st of the new calendar year...

The Medicare fee is the sum of the geographically adjusted work, practice expense and malpractice values multiplied by the conversion factor. The MAR is calculated by substituting the Division conversion factor. The Division conversion factor for 2015 is \$56.20.

For procedure code 99214 on June 9, 2015, the relative value (RVU) for work of 1.50 multiplied by the geographic practice cost index (GPCI) for work of 1.018 is 1.527000. The practice expense (PE) RVU of 1.43 multiplied by the PE GPCI of 1.009 is 1.442870. The malpractice (MP) RVU of 0.10 multiplied by the MP GPCI of 0.772 is 0.077200. The sum of 3.047070 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$171.25.

For CPT code 99214 on July 15, 2015, the RVU for work of 1.50 multiplied by the GPCI for work of 1.018 is 1.527000. The PE RVU of 1.43 multiplied by the PE GPCI of 1.009 is 1.442870. The MP RVU of 0.10 multiplied by the MP GPCI of 0.772 is 0.077200. The sum of 3.047070 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$171.25.

For CPT code 99214 on August 5, 2015, the RVU for work of 1.50 multiplied by the GPCI for work of 1.018 is 1.527000. The PE RVU of 1.43 multiplied by the PE GPCI of 1.009 is 1.442870. The MP RVU of 0.10 multiplied by the MP GPCI of 0.772 is 0.077200. The sum of 3.047070 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$171.25.

For CPT code 99214 on September 9, 2015, the RVU for work of 1.50 multiplied by the GPCI for work of 1.018 is 1.527000. The PE RVU of 1.43 multiplied by the PE GPCI of 1.009 is 1.442870. The MP RVU of 0.10 multiplied by the MP GPCI of 0.772 is 0.077200. The sum of 3.047070 is multiplied by the Division conversion factor of \$56.20 for a MAR of \$171.25.

4. The total MAR for the disputed services is \$685.00. The insurance carrier paid \$0.00. The recommended amount for reimbursement is \$685.00.

### **Conclusion**

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$685.00.

## ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code Sections 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services involved in this dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$685.00 plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### Authorized Signature

_____ Signature	Laurie Garnes Medical Fee Dispute Resolution Officer	January 15, 2016 Date
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## YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**